THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.2141 OF 2006

ORDER:

The petitioner is a Small Scale Industry manufacturing packaged drinking water (other than packaged natural mineral water), having its factory at Modavalasa village, Denkonda Mandal, Vizianagaram district. Among other licenses/permissions obtained from various authorities, the petitioner also obtained a licence dated 18.9.2002 under the provisions of the Bureau of Indian Standards (Certification) Regulations, 1988 (for short the "Regulations"), under which the petitioner was permitted to use the standard mark in respect of packaged drinking water. The said licence was valid for a period of one year i.e., up to 17.9.2003. It appears that during the periodical inspections to the petitioner's unit conducted by the 4th respondent on 3.1.2003 and 6.2.2003, certain discrepancies/lapses were noticed in the operation of licence and, consequently, by letter dated 21.2.2003, the petitioner was directed to stop using the ISI mark on the products manufactured by it, as per Clause 5(7)(b) of the Regulations. In the said letter the petitioner was also directed to confirm that the marking ISI mark on its products has been stopped, and that the material lying by that time should be withheld and the same can be released after making a further verification visit. It was also made clear that in case corrective action for all the discrepancies/lapses noticed during the visits on 3.1.2003 and 6.2.2003 is taken to the satisfaction of the 3rd respondent, the petitioner would be permitted to resume ISI marking. Accordingly, the petitioner was called upon to take immediate steps for corrective action and confirm that the ISI marking is suspended with immediate effect. A reminder dated 27.2.2003 to that effect was sent by the 3rd respondent on 27.2.2003, calling upon the petitioner to send the confirmation immediately by FAX to the effect that it had stopped

ISI marking on its products. That apart, the 3rd respondent by letter dated 12.3.2003 while communicating the test report of the sample drawn from it's plant on 6.2.2003 which failed to meet the requirements specified thereunder, called upon the petitioner to explain the reasons with regard to the sub-standard of its product.

In the meanwhile, the petitioner by letter dated 10.3.2003 informed the 3rd respondent that they had stopped ISI marking on its product and requested to arrange inspection at an early date. As advised, the petitioner had also paid the inspection charges by way of a demand draft on 12.8.2003. Thereafter, the plant of the petitioner was inspected on 26.3.203 by the staff of the 3rd respondent for verification of the corrective action taken by the petitioner. However, it was observed that corrective action was not completed. When the plant was again visited on 8.8.2003, it was noticed by the respondents 2 and 3 that the petitioner was processing and packaging water and supplying the same with ISI mark in spite of its suspension with effect from 21.2.2003. However, the petitioner by its letter dated 21.8.2003 again made a request for arranging a visit for verification, duly remitting inspection charges. The said request was not accepted by the 3rd respondent, since it was noticed that the petitioner continued to use ISI marking in spite of the order of suspension and, accordingly, by letter dated 16.9.2003, the 3rd respondent informed the petitioner that they intended to allow its licence to expire after its due date and not to entertain any application for renewal. In case the petitioner intends to have personal hearing, he was granted liberty to meet the 3rd respondent within 15 days from the date of the said letter. That apart, the petitioner was also called upon to show cause as to why action as per Section 34 of the Bureau of Indian Standards Act, 1986 (for short "the Act") should not be taken against it for contravention of the provisions of the Act. In response to the same, the petitioner by letter dated 1.10.2003 explained that the lapses were committed by the staff

due communication gap which was neither willful nor wanton and, accordingly requested that a lenient view may be taken, and the proceedings may be dropped. In the meanwhile, the period of licence in favour of petitioner-unit stood expired on 17.9.2003. Thereafter, the 3rd respondent passed an order dated 1.10.203 holding that the petitioner is not entitled for renewal of the licence and the same was allowed to expire after 17.9.2003. Accordingly, special inspection charges remitted by the petitioner were returned and it was made clear that the petitioner shall not use the standard mark on its product i.e, packaged drinking water with effect from 18.9.2003. The petitioner was also advised to surrender the original licence along with all its attachments immediately and to destroy the publicity material such as hand-bills, pamphlets, letter heads etc., in which the petitioner was shown as licensee of BIS for the above product.

Aggrieved by the order dated 1.10.2003, the petitioner preferred an appeal before the 1st respondent under Section 16 of the Act. The 1st respondent having heard both the parties in detail, and having considered the entire material on record, while concluding that that directions issued by BIS from time to time were not complied with by the petitioner and that the petitioner had resorted to misuse of ISI mark, dismissed the appeal. Hence, this writ petition seeking a declaration that the order of the 3rd respondent dated 1.10.2003, as confirmed by the 1st respondent by its order dated 17.5.2004, is arbitrary and illegal.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner vehemently contended that in spite of the fact that the petitioner remitted inspection charges of Rs.3,000/- and testing charges of Rs.10,800/-, respondents failed to inspect the petitioner's plant to ascertain the corrective action taken by the petitioner. The learned counsel contended that since in its letter dated 16.9.2003, the 3rd respondent had called upon

the petitioner to inform within 15 days as to the corrective action taken by it, without ascertaining the corrective action taken by the petitioner, the 3rd respondent ought not to have straight away rejected the application for renewal.

From the facts narrated above, which are evidenced by the record placed before this Court, it is clear that on account of the lapses/discrepancies noticed in the inspections dated 3.1.2003 and 6.2.2003, the petitioner was directed to stop using ISI mark on its product with effect from 21.2.2003. The petitioner was also afforded an opportunity to take corrective action and he was informed from time to time that the order of suspension would be recalled and it would be permitted to resume using of ISI mark in case corrective action taken by it is found to be satisfactory. In spite of the same, the petitioner failed to comply with the directions of the 3rd respondent and, admittedly, in the visit dated 26.3.2003, it was found that the petitioner did not complete the corrective action. Moreover, in the next visit conducted on 8.8.2003, it was noticed that the petitioner was still processing and packing water and supplying the same with ISI mark in violation of the order of suspension dated 21.2.2003.

Nothing has been placed before this Court to contradict the above facts, but the petitioner has only pleaded that subsequently corrective action has been taken and they also stopped using ISI mark and, therefore, without conducting a fresh visit and verification of the corrective action, the respondents are not justified in passing the impugned.

Since, admittedly, the petitioner had used standard mark in spite of the order of suspension, it would amount to misuse of ISI mark in violation of the provisions of BIS Act. The 3rd respondent had recorded a clear finding to that effect in its order dated 1.10.2003. It is relevant to note that even at the stage of appeal, the petitioner was afforded an opportunity to furnish relevant material to show that the directions issued by BIS from time to time have been complied with. Though the

petitioner took time to produce such material, it failed to do so. In the circumstances, the appellate authority having found that the petitioner did not possess proper infrastructure, material and man power for testing of water in conformity with the norms of BIS licence, held that the 3rd respondent had rightly refused to renew the licence of the petitioner.

On a careful consideration of the entire material on record as well as the provisions of the BIS Act, and the Regulations made thereunder, and in view of the admitted fact that the petitioner failed to operate the licence in conformity with the norms of BIS licence and misused the ISI mark, I am unable to hold that respondents have committed any error in rejecting the renewal of the licence in favour of the petitioner. Merely because the 3rd respondent in its letter dated 16.9.2003 advised the petitioner to inform as to what corrective action has been taken by it, the petitioner cannot claim to have acquired a right for further verification visit by the respondents. Hence, the petitioner cannot contend that the impugned orders are illegal on the ground that the respondents failed to conduct such visit.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly, dismissed. No costs.

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(G. ROHINI, J.

23rd October, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.2141 OF 2006

23rd October, 2006.

Between:

M/s Pallavi Industries, Office at 52-14-34,
Rasavanipalem, Near Bullaiah College,
Visakhapatnam –16, represented by its
Proprietor – L. Krishna Kishore. .. Petitioner.

And

The Government of India, represented by its
Secretary, Ministry of Consumer Affairs,
Food and Public Distribution, Department of
Consumer Affairs, Krishi Bhavan,
New Delhi and others. .. Respondents.